

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Raquel Velasquez	Team: Team # 1	CCRB Case #: 201308911	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 09/21/2013 10:15 PM	Location of Incident: § 87(2)(b)	Precinct: 79	18 Mo. SOL 3/21/2015	EO SOL 3/21/2015	
Date/Time CV Reported Tue, 09/24/2013 3:50 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 09/24/2013 3:51 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. CPT Joseph Matzinger	00000	927158	PSA 3
2. POM James Pruitt	08123	954246	PSA 3
3. POM Christoph Mcevoy	17307	953084	PSA 3

Officer(s)	Allegation	Investigator Recommendation
A.POM James Pruitt	Abuse: PO James Pruitt stopped § 87(2)(b)	§ 87(2)(b)
B.POM Christoph Mcevoy	Abuse: PO Christopher McEvoy stopped § 87(2)(b)	§ 87(2)(b)
C.POM James Pruitt	Force: PO James Pruitt used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Christoph Mcevoy	Force: PO Christopher McEvoy used physical force against § 87(2)(b)	§ 87(2)(b)
E.CPT Joseph Matzinger	Force: Capt. Joseph Matzinger used physical force against § 87(2)(b)	§ 87(2)(b)
F.CPT Joseph Matzinger	Force: Capt. Joseph Matzinger used pepper spray against § 87(2)(b)	§ 87(2)(b)

Case Summary

On September 24, 2013, § 87(2)(b) filed this complaint with the CCRB via the online website on behalf of his 24-year old son, § 87(2)(b) (encl. C1-C7)

On September 21, 2013, at approximately 10:15 p.m., § 87(2)(b) was approached by PO James Pruitt and PO Christopher McEvoy, from PSA 3, while sitting in front of § 87(2)(b) in Brooklyn. The interaction resulted in the following allegations:

Allegation A- Abuse of Authority: PO James Pruitt stopped § 87(2)(b)

Allegation B- Abuse of Authority: PO Christopher McEvoy stopped § 87(2)(b)

Allegation C- Force: PO James Pruitt used physical force against § 87(2)(b)

Allegation D- Force: PO Christopher McEvoy used physical force against § 87(2)(b)

Allegation E- Force: Capt. Joseph Matzinger used physical force against § 87(2)(b)

Allegation F- Force: Capt. Joseph Matzinger used pepper spray against § 87(2)(b)

§ 87(2)(g)

This case was not mediation eligible.

This case was reassigned from Investigator Catherine Twigg on October 22, 2013, upon her departure from the agency.

Results of Investigation

Civilian Statements

Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old black male, who stands 6'1" tall, weighs 230 pounds, and has black hair and brown eyes. § 87(2)(b)

Statements made to Medical Personnel

On § 87(2)(b), § 87(2)(b) was seen by EMT § 87(2)(b). He complained of pain to his eyes from being pepper sprayed and was coughing. He denied loss of consciousness, nausea, shortness of breath, and dizziness.

On § 87(2)(b), § 87(2)(b) was treated at § 87(2)(b). His chief complaint was eye burning and coughing from being pepper sprayed. He stated that he was assaulted by the police, hit on the back of his neck, on his left upper arm, and being handcuffed with subsequent pain in his left forearm. § 87(2)(b) denied being hit on the head or suffering loss of consciousness.

CCRB Testimony

§ 87(2)(b) who is autistic, was interviewed at the CCRB on October 9, 2013 and provided additional information on January 15, 2014. § 87(2)(g)

On September 21, 2013, at approximately 10:15 p.m., § 87(2)(b) was sitting on a bench alone, in front of § 87(2)(b) in Brooklyn. He did not see anyone in the area and did not remember what he was wearing on this day. § 87(2)(b) picked out two empty beer cans from a garbage can by the bench, in order to recycle them. § 87(2)(b) put the cans in a plastic supermarket bag, which had nothing else in it. § 87(2)(b) did not drink any alcohol or use any drugs on this day.

Immediately after he picked up the cans, § 87(2)(b) turned around and saw two uniformed officers, identified via investigation as PO James Pruitt and PO Christopher McEvoy, both from PSA 3, walking towards him. § 87(2)(b) described PO Pruitt and PO McEvoy as white males who were shorter than 6'1" tall. He could not describe either officer further.

PO Pruitt and PO McEvoy asked for § 87(2)(b)'s identification twice, but he refused both times. PO Pruitt and PO McEvoy said that they thought he was drinking. § 87(2)(b) explained that he was picking up the cans to recycle them. PO Pruitt and PO McEvoy couldn't understand what § 87(2)(b) was saying and said that they were going to take him to the stationhouse, but did not say why. § 87(2)(b) did not shout or curse at PO Pruitt and PO McEvoy.

§ 87(2)(b) was close to the children's park in front of his building, when one of the officers kicked his leg, causing him fall to the ground on his front. § 87(2)(b)'s right forearm was scratched and bleeding. At some point, an officer called for back-up over the radio. While he was on the ground, an officer identified via investigation as Capt. Joseph Matzinger, from PSA 3, sprayed pepper spray in his eyes. § 87(2)(b) described Capt. Matzinger as a male and who was wearing a white shirt. § 87(2)(b) did not notice at what point Capt. Matzinger arrived because his head was down. Capt. Matzinger used an elbow to hit § 87(2)(b)'s left arm, held his neck down with his arm, and pressed his fingernails into his neck. This did not restrict his breathing. Then, Capt. Matzinger handcuffed § 87(2)(b). § 87(2)(b) did not say anything and did not move away from the officers or try to leave. § 87(2)(b) did not remember whether the officers said anything to him.

One of § 87(2)(b)'s neighbors, an unidentified young male whose name he did not know, saw the police interacting with him and came outside to tell the officers that § 87(2)(b) does not bother anybody. § 87(2)(b) did not see anyone else outside.

The officers went into the building, knocked on the door of § 87(2)(b)'s apartment, and spoke to his father, § 87(2)(b) who came downstairs. § 87(2)(b)'s handcuffs were removed and he was taken to § 87(2)(b) in an ambulance. § 87(2)(b) had pain to his arm and neck, a mark to his neck from the fingernails and a scratch to his right forearm. X-rays were performed on his arm and neck. § 87(2)(b) was not arrested or issued a summons.

Complainant: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old black male who stands 5'10" tall, and has black hair and brown eyes.

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on October 9, 2013. (D1-D6)

On September 21, 2013, at 10:30 p.m., § 87(2)(b) was in his apartment, § 87(2)(b) at § 87(2)(b) when he heard a knock on his door. § 87(2)(b) answered the door and spoke to a uniformed officer who identified himself as Capt. Joseph Matzinger, from PSA 3, and was described as a white male, who stood 6'1" tall, with a medium build, and weighed 230 pounds. Capt. Matzinger told § 87(2)(b) that § 87(2)(b) was downstairs drunk and had been handcuffed. Capt. Matzinger also said that he pepper sprayed § 87(2)(b) because he resisted and officers could not control him. § 87(2)(b) went downstairs with Capt. Matzinger.

When they got outside § 87(2)(b) § 87(2)(b) saw § 87(2)(b) sitting on the ground by a bench in handcuffs, crying and rocking back and forth. § 87(2)(b) § 87(2)(b)'s face was covered with what looked like sand, and he later saw a fingernail mark on his neck, but he did not notice any injuries. Capt. Matzinger told § 87(2)(b) that he had come upstairs because someone had said that § 87(2)(b) was autistic. Capt. Matzinger asked if this was true and if § 87(2)(b) took any medication. § 87(2)(b) confirmed that § 87(2)(b) was autistic and had a speech impediment, but did not take medication. Capt. Matzinger explained that they would not arrest § 87(2)(b) and would call an ambulance to evaluate him. § 87(2)(b) went with § 87(2)(b) to the hospital. § 87(2)(b) later spoke to a female identified as § 87(2)(b) the president of the building, who said that she had not witness the incident, but had received a call from a neighbor saying that the police were arresting § 87(2)(b).

Attempts to Contact Civilians

On November 11, 2013, § 87(2)(b) provided the name of the building president, § 87(2)(b) who had the name and contact information of the unknown young male who witnessed the incident. On November 14, 2013, a Lexis Nexis search revealed an address, a phone number, and two emails for § 87(2)(b). Between November 14 and December 16, 2013, five calls were placed to § 87(2)(b) on the phone number yielded from the Lexis Nexis search. During each call, the undersigned yielded a busy dial tone and was unable to leave a voice message. Emails were sent to both email addresses on November 21, 2013, but were returned for unknown reasons. Please call letters were mailed to § 87(2)(b) on November 14 and December 3, 2013. Neither letter has been returned by the USPS as undeliverable. § 87(2)(b) has not contacted the CCRB.

Other Evidence

Video Footage from § 87(2)(b) Sumner Houses was obtained from the New York City Housing Authority. Three of the surveillance cameras captured the interaction between § 87(2)(b) PO Pruitt, PO McEvoy, and Capt. Matzinger. The video footage is located in CD #2: File B14C25 (Video Clip #1) and CD#1: File B14C13 (Video Clip #2). The video footage has no audio and requires player to view.

Video Clip #1

The surveillance camera shows part of a fenced park. To the left is the street with a walkway from the left to the right of the camera angle. In between the fenced park and the walkway is a trash can and two benches to the right of the trash can.

At 10:10:34, § 87(2)(b) appears in camera view, walking towards the benches. § 87(2)(b) removes a white or clear plastic bag from his hoodie pocket. He then looks around and removes objects from the garbage can. It is unclear what the objects are. § 87(2)(b) sits on the bench closest to the garbage can and continues to remove more objects from the garbage can. At 10:11:56, § 87(2)(b) places the plastic bag on the ground, in between the bench and the garbage can, and removes another plastic bag from his hoodie pocket. § 87(2)(b) opens the plastic bag and looks around. At 10:13:56, § 87(2)(b) places the bag behind him, on the bench. At 10:14:04, two individuals walk into camera view. One of the individuals approaches § 87(2)(b) and they shake hands. Then, both individuals walk towards the street. At 10:14:18, § 87(2)(b) picks up the plastic bag that appears to have fallen in between the garbage can and the bench, opens it up, and looks around.

At 10:14:36, § 87(2)(b) picks an object from the garbage can that appears to be a can, the object falls in between the garbage can and the bench. He picks it up and places it in the plastic bag. § 87(2)(b) looks around and at 10:14:56, places the plastic bag on the ground, in

between the garbage can and almost behind the bench. At 10:15:07, PO McEvoy and PO Pruitt appear in camera view from the right. PO McEvoy approaches § 87(2)(b) and stands in front of him, partially blocking his body from the camera view. PO Pruitt stands a couple of feet back, to the right of the camera view. § 87(2)(b)'s right arm can be seen leaning towards the garbage can. PO McEvoy and § 87(2)(b) appear to be conversing, and PO Pruitt moves closer. At 10:15:26, § 87(2)(b) stretches his arms out, on his sides, and stands up. PO Pruitt moves closer. § 87(2)(b) reaches his arms up from his sides several times and points towards the garbage can. At 10:15:51, § 87(2)(b) takes steps towards the right of the camera view, and then runs. PO McEvoy and PO Pruitt run after him, and out of the camera view.

Video Clip #2

The surveillance camera shows a fenced park north of the screen. South of the screen are two benches, and below that, another fenced park. There is a walkway in between both parks.

At 10:15:55, § 87(2)(b) PO McEvoy, and PO Pruitt appear in the camera view and run up to the benches. At 10:16:03, PO Pruitt hits § 87(2)(b) on his upper body once, causing him to fall to the ground on his back. PO McEvoy kneels down and appears to grab onto one of § 87(2)(b)'s hands. § 87(2)(b) is moving side to side. Both officers lean down towards § 87(2)(b) but it is unclear what they are doing. At 10:16:22, PO McEvoy lies across § 87(2)(b)'s back while he is face down. § 87(2)(b)'s body is in a diagonal position. The back of § 87(2)(b)'s legs can be seen. He raises them back and moves them up and down. PO Pruitt moves near § 87(2)(b)'s head and leans towards him, but it is unclear what he is doing. At 10:16:37, Capt. Matzinger walks from the street into the split walkway, while PO McEvoy is leaning on § 87(2)(b)'s back. At 10:16:42, Capt. Matzinger approaches the officers and walks around them, towards § 87(2)(b)'s head. § 87(2)(b)'s body cannot be seen but his feet are on the opposite direction. Capt. Matzinger appears to grab § 87(2)(b)'s upper body and all three officers move him counter clockwise. § 87(2)(b) appears to be moving around. The officers appear to be holding him down.

At 10:17:01, Capt. Matzinger removes something from his front left side and points it at § 87(2)(b)'s upper body for about 6 seconds. § 87(2)(b)'s face can't be seen. PO Pruitt lets go of § 87(2)(b) and moves back. At 10:17:10, § 87(2)(b) lifts his body upward. PO Pruitt and PO McEvoy hold onto his body. Capt. Matzinger strikes § 87(2)(b) three times near his upper body. (It is unclear exactly what part of his body he hit.) At the same time, PO McEvoy punches § 87(2)(b) in the back twice. § 87(2)(b) continues to lift his lower body. PO McEvoy lays his chest on § 87(2)(b)'s back, while Capt. Matzinger and PO Pruitt appear to handcuff § 87(2)(b). § 87(2)(b) stops moving.

NYPD Statements:

Subject Officer: PO JAMES PRUITT

- PO Pruitt is a § 87(2)(b) old black male, who stands 5'11" tall, weighs 215 pounds, and has black hair and brown eyes.
- On September 21, 2013, PO Pruitt worked 7:00 p.m. to 2:35 a.m. and was assigned to foot post #17 at § 87(2)(b) with PO McEvoy, and was dressed in uniform.

Memo Book

At 10:20 p.m., one male identified as § 87(2)(b) was stopped for open container in front of § 87(2)(b). § 87(2)(b) was observed with a bag that contained 24 oz. beer cans. When questioned, § 87(2)(b) became irrational and ran. The officers chased and apprehended him, at which point they noticed that he was an emotionally disturbed person,

and requested an ambulance. § 87(2)(b)'s parents were notified and were present at the scene. At 10:50 p.m., an FDNY ambulance arrived.

AIDED Report Worksheet #§ 87(2)(b)

PO Pruitt noted the following on the AIDED worksheet, "At t/p/o AIDED was acting irrationally and combative. AIDED was drinking. Upon further investigation, AIDED was deemed to be an emotionally disturbed person. O.C. spray was used to subdue the AIDED. AIDED was transported to § 87(2)(b) Parents present."

CCRB Testimony

PO Pruitt was interviewed at the CCRB on April 11, 2014. (encl. F1-F8)

PO Pruitt and PO McEvoy were on routine patrol, walking towards § 87(2)(b) when they observed § 87(2)(b) sitting on the benches outside of § 87(2)(b). § 87(2)(b) was holding a white plastic bag that contained cans. § 87(2)(b) saw PO Pruitt and PO McEvoy and immediately threw the bag on the ground, right next to him, which raised the officers' suspicion that he was littering. PO Pruitt and PO McEvoy intended on issuing § 87(2)(b) a summons for littering. PO Pruitt did not know there were beer cans inside the bag until after they approached § 87(2)(b). PO Pruitt intended on finding out why § 87(2)(b) threw the bag and obtaining his pedigree information to issue him a summons for open container and littering. PO Pruitt did not know what § 87(2)(b) was doing with the beer cans.

PO Pruitt spoke first and asked § 87(2)(b) "What are you doing?" § 87(2)(b) responded, "Stop harassing me." PO Pruitt asked § 87(2)(b) for identification. § 87(2)(b) replied, "Stop harassing me. Why are you harassing me?" PO Pruitt asked § 87(2)(b) again for identification. PO McEvoy did not say anything. § 87(2)(b) repeated, "stop harassing me," and ran. § 87(2)(b) did not say anything else. PO Pruitt and PO McEvoy ran after § 87(2)(b) because he had been stopped. § 87(2)(b) was considered under arrest because he was going to be issued a summons, which is given in lieu of arrest.

PO Pruitt, PO McEvoy, and § 87(2)(b) ran about fifteen feet until they were able to apprehend him. PO Pruitt described § 87(2)(b) as a big guy. PO Pruitt grabbed § 87(2)(b) by his shoulder and § 87(2)(b) fell. PO Pruitt did not and did not see PO McEvoy trip or punch § 87(2)(b) causing him to fall.

While on the ground, PO Pruitt told § 87(2)(b) to put his hands behind his back but he did not comply. PO Pruitt and PO McEvoy tried to grab § 87(2)(b)'s arms to handcuff him but § 87(2)(b) flailed his arms. Fifteen seconds later, PO McEvoy called for backup because they needed help apprehending § 87(2)(b). PO Pruitt and PO McEvoy continued trying to grab § 87(2)(b)'s arms and told him to put his hands behind his back. § 87(2)(b) did not verbally respond and did not do anything else other than flail his arms.

Capt. Matzinger arrived approximately a minute later and also told § 87(2)(b) to place his hands behind his back. § 87(2)(b) continued flailing his arms. Capt. Matzinger also tried grabbing § 87(2)(b)'s hands. Then, Capt. Matzinger pepper sprayed § 87(2)(b). § 87(2)(b) screamed but PO Pruitt did not recall if he said anything. The officers were able to handcuff § 87(2)(b) seconds after he was pepper sprayed. PO Pruitt did not and did not see PO McEvoy or Capt. Matzinger punch, kick, elbow, or strike § 87(2)(b) with a knee. PO Pruitt did not and did not see PO McEvoy or Capt. Matzinger hold § 87(2)(b)'s head against the ground or press their fingernails in his neck.

PO Pruitt noticed an unidentified male, although he was not sure how long he had been standing and watching. The male did not say anything during the altercation, but after § 87(2)(b) was handcuffed, he told the officers that § 87(2)(b) was emotionally disturbed. The male and Capt. Matzinger went to § 87(2)(b)'s home and spoke to his parents. Capt.

Matzinger deemed § 87(2)(b) emotionally disturbed and an ambulance was called. The interaction lasted approximately ten minutes. § 87(2)(b) was not issued a summons or arrested but PO Pruitt prepared an Aided card.

During the interview, PO Pruitt was shown a video recording of this incident (labeled § 87(2)(b)), zoomed in at 200%. PO Pruitt viewed the video from 10.15.55 to 10.18.48. At 10:16:02, PO Pruitt pointed that he did not hit § 87(2)(b) in the back and reaffirmed that he only grabbed § 87(2)(b) and § 87(2)(b) fell by himself. At 10:16:06, PO Pruitt identified himself as the officer standing up. The video did not refresh PO Pruitt's independent recollection of seeing Capt. Matzinger hit § 87(2)(b) with his knee or PO McEvoy punch his back. At 10:17:56, after § 87(2)(b) was handcuffed, he was held against the ground because he continued to move his body around.

Subject Officer: PO CHRISTOPHER MCEVOY

- *PO McEvoy is a § 87(2)(b) old white male, who stands 6' tall, weighs 250 pounds, and has blonde hair and blue eyes.*
- *On September 21, 2013, PO McEvoy worked 7:00 p.m. to 3:35 a.m., and was assigned to a foot post at the Somner Houses-NYCHA building with PO Pruitt, and was dressed in uniform.*

Memo Book

At 10:20 p.m., PO McEvoy noted that § 87(2)(b) was observed in possession of two open beer cans in front of § 87(2)(b) and was stopped. When questioned, § 87(2)(b) became irrational and ran. The officers chased § 87(2)(b) and apprehended him, at which point they noticed that he was an emotionally disturbed person and an ambulance was requested. § 87(2)(b)'s parents were notified and present at the scene. At 10:50 p.m., FDNY ambulance arrived and § 87(2)(b) was removed to § 87(2)(b).

CCRB Testimony

PO McEvoy was interviewed at the CCRB on May 2, 2014. § 87(2)(g)
§ 87(2)(b) (encl. G1-G7)

PO McEvoy and PO Pruitt were standing approximately twenty feet away when they observed § 87(2)(b) standing in front of § 87(2)(b) near benches. PO McEvoy believed that he and PO Pruitt observed § 87(2)(b) put a beer can into a white plastic bag that he was holding. PO McEvoy then clarified that he was not sure if they saw § 87(2)(b) put the beer can in the bag, but knew that § 87(2)(b) had a bag with beer cans because they could see through the bag. § 87(2)(b) saw PO McEvoy and PO Pruitt, and threw the bag on the ground. PO McEvoy and PO Pruitt observed § 87(2)(b) for one minute and did not see him do anything else. PO McEvoy was not sure if he saw § 87(2)(b) sitting at any point during the observation. PO McEvoy and PO Pruitt intended on issuing § 87(2)(b) summonses for littering and for open container.

PO Pruitt and PO McEvoy ran about thirty feet before apprehending § 87(2)(b). PO McEvoy was immediately behind PO Pruitt and believed that PO Pruitt grabbed § 87(2)(b) by the right arm, but could not see because PO McEvoy was on the other side of him. As soon as PO Pruitt grabbed § 87(2)(b), § 87(2)(b) fell forward, on his hands. PO McEvoy did not know what caused § 87(2)(b) to fall but he did not see PO Pruitt punch or trip § 87(2)(b). PO McEvoy and PO Pruitt did not do anything else other than pull § 87(2)(b)'s arms behind his back and tell § 87(2)(b) to stop resisting. § 87(2)(b) flailed his arms and said, "Get off me." PO McEvoy did not think that § 87(2)(b) was an emotionally disturbed person prior to being told this.

PO McEvoy did not remember punching, kicking, or striking § 87(2)(b) with a knee while on ground or seeing PO Pruitt or Capt. Matzinger do this. The whole incident happened so fast. PO McEvoy did not believe that he, PO Pruitt, or Capt. Matzinger elbowed § 87(2)(b) held his head against the ground, or pressed their fingernails into his neck.

During the interview, PO McEvoy was shown a video recording of this incident (labeled § 87(2)(b)), zoomed in at 200%. PO McEvoy viewed the video from 10:15:55 to 10:18:48. PO McEvoy affirmed that the person on the ground was § 87(2)(b). PO McEvoy identified himself as the officer to the left, and PO Pruitt was the officer to the right. The video did not refresh PO McEvoy's independent recollection of seeing PO Pruitt strike or push § 87(2)(b) causing him to fall on the ground. PO McEvoy affirmed that the officer in the white shirt was Capt. Matzinger. The video did not refresh PO McEvoy's independent recollection of having punched § 87(2)(b)'s back. PO McEvoy reaffirmed that he did not see Capt. Matzinger strike § 87(2)(b) with his knee during the altercation. PO McEvoy affirmed that PO Pruitt was the officer standing up and that he was the officer on the ground, next to § 87(2)(b). PO McEvoy affirmed that he was trying to hold down § 87(2)(b)'s legs because he was kicking back.

Subject Officer: CAPT. JOSEPH MATZINGER

- *Capt. Matzinger is a § 87(2)(b) old white male, who stands 6'2" tall, weighs 205 pounds, and has brown hair and green eyes.*
- *On September 21, 2013, Capt. Matzinger worked 5:00 p.m. to 2:00 a.m. and was assigned as the Impact Captain. Capt. Matzinger was working alone, was dressed in uniform and assigned to a black Ford Taurus.*

Memo Book

Capt. Matzinger is not required to carry a memo book because of his rank.

CCRB Testimony

Capt. Matzinger was interviewed at the CCRB on April 23, 2014. § 87(2)(g)

(encl. H1-H3)

Capt. Matzinger was driving alone on Myrtle Avenue when he heard a struggle and yelling outside of his car. He observed PO Pruitt and PO McEvoy about 100 to 200 feet away, rolling on the ground and struggling with § 87(2)(b). Capt. Matzinger approached the officers, got on the ground, and all three officers tried to grab § 87(2)(b)'s arms to handcuff him. § 87(2)(b) was very strong, and flailed his arms and kicked his legs. Capt. Matzinger did not recall using or seeing PO Pruitt and PO McEvoy using any other force.

Capt. Matzinger did not remember when he decided to pepper spray § 87(2)(b) but did it because § 87(2)(b) was striking the officers. Capt. Matzinger did not want to continue fighting and did not want anyone to get injured. Capt. Matzinger could not estimate how long he pepper sprayed § 87(2)(b) but it was several seconds. § 87(2)(b) calmed down and the officers were able to handcuff him. Capt. Matzinger did not remember how long it took from the moment he approached the struggle until § 87(2)(b) was handcuffed but stated the incident happened quickly.

Capt. Matzinger did not recall punching, kneeing, or kicking § 87(2)(b) or seeing PO Pruitt or PO McEvoy do this. Capt. Matzinger did not recall holding § 87(2)(b)'s head against the ground or seeing PO Pruitt or PO McEvoy do this. Capt. Matzinger did not press his fingernails in § 87(2)(b)'s neck and showed for the record that his fingernails are short.

PO Pruitt and PO McEvoy sat § 87(2)(b) up on the ground and Capt. Matzinger moved away and approached an uninvolved civilian who had witnessed the physical altercation.

The uninvolved civilian told Capt. Matzinger that § 87(2)(b) suffered from a mental disability and that he knew where § 87(2)(b) lived. Capt. Matzinger went to § 87(2)(b)'s apartment and spoke with his parents who confirmed that he had a mental disability. Capt. Matzinger explained to § 87(2)(b)'s parents what had occurred, went downstairs, and called for an ambulance so that § 87(2)(b) could be evaluated.

§ 87(2)(b) was not issued a summons or arrested because Capt. Matzinger determined that neither option would have been appropriate. Capt. Matzinger was concerned with making sure that § 87(2)(b) was safe and not a danger to himself or others given his mental disability. Capt. Matzinger did not know that § 87(2)(b) was mentally disabled when he first approached the struggle and noted that he did not appear disabled.

During the interview, Capt. Matzinger was shown a video recording of this incident (labeled § 87(2)(b)), zoomed in at 200%.

Capt. Matzinger viewed the video from 10:15:55 to 10:18:48. At 10:16:42, Capt. Matzinger noted that he walked into the scene at 10:16:42. The video was played again from 10:17:04 to 10:17:20. Capt. Matzinger couldn't make out what was happening in the video. Capt. Matzinger did not recall if that was when he pepper sprayed § 87(2)(b). Capt. Matzinger could not recall if he had trouble reaching or grabbing his pepper spray can. The video did not refresh Capt. Matzinger's independent recollection of kneeling or kicking § 87(2)(b). It was pointed out that in the video he appears to move his knee towards § 87(2)(b) however, Capt. Matzinger could not describe what he was doing. At the same time this occurred, one of the officer's to the right of § 87(2)(b)'s body appears to punch § 87(2)(b)'s back. However, this did not refresh Capt. Matzinger's independent recollection of seeing this occur. Capt. Matzinger also could not identify which officer that was. Up until 10:18:25, Capt. Matzinger could not describe what was going on in the video. The video did not refresh his independent recollection of what § 87(2)(b) or the officers were doing on ground. At 10:18:48, Capt. Matzinger noted that at that point he stood up because § 87(2)(b) was handcuffed.

Medical Records

On § 87(2)(b), § 87(2)(b) was seen by EMT § 87(2)(b). It was noted that he was speech impaired and has a learning disability. § 87(2)(b)'s eyes were flushed with sterile water. On § 87(2)(b), § 87(2)(b) was treated at § 87(2)(b). A topical anesthetic was applied to both eyes to alleviate the burning of the pepper spray. He was diagnosed with swelling in his left forearm. X-rays were performed on his left arms and spine that did not reveal any fractures or abnormalities.

Status of Civil Proceedings

§ 87(2)(b) filed a Notice of Claim with the City of New York on § 87(2)(b), claiming permanent personal injuries including but not limited to conscious pain and suffering, severe mental anguish, emotional distress, humiliation and embarrassment, loss of Civil Rights and personal freedom and privacy. No monetary value is listed as redress. (encl. L1-L2).

Civilians Criminal History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilians CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. B5)
- This is the first CCRB complaint filed on behalf of § 87(2)(b) (encl. B6)

Subject Officers CCRB History

- PO James Pruitt has been a member of the service for one year and there are no substantiated CCRB allegations against him. This is PO Pruitt's first CCRB complaint. (encl. B1).
- PO Christopher McEvoy has been a member of the service for one year and there are no substantiated CCRB allegations against him. This is PO McEvoy's first CCRB complaint. (encl. 2).
- Capt. Joseph Matzinger has been a member of the service for thirteen years and there are four substantiated CCRB allegations against him. (encl. 3-4).
 - In CCRB case number 200715888, allegations of abuse of authority, vehicle stop, vehicle search, and frisk and search of person, were substantiated. The CCRB recommended charges. The NYPD declined to prosecute.

Conclusion

Identification of Subject Officers

PO Pruitt, PO McEvoy, and Capt. Matzinger acknowledged interacting with § 87(2)(b)

Investigative Findings and Recommendations

Allegation A- Abuse of Authority: PO James Pruitt stopped § 87(2)(b)

Allegation B- Abuse of Authority: PO Christopher McEvoy stopped § 87(2)(b)

Allegation C- Force: PO James Pruitt used physical force against § 87(2)(b)

Allegation D- Force: PO Christopher McEvoy used physical force against § 87(2)(b)

Allegation E- Force: Capt. Joseph Matzinger used physical force against § 87(2)(b)

Allegation F- Force: Capt. Joseph Matzinger used pepper spray against § 87(2)(b)

§ 87(2)(b) stated that he was approached by PO Pruitt and PO McEvoy after picking up two empty beer cans from a garbage can and placing them in a plastic bag. PO Pruitt and PO McEvoy said that they thought he was drinking. § 87(2)(b) explained that he was picking up the cans to recycle them. The officers asked for his identification, but he refused to provide it. Then, § 87(2)(b) explained that he was close to a children's park in front of his building when PO Pruitt kicked his leg, causing him fall to the ground on his front. § 87(2)(b) could not estimate how much time passed and could not describe in detail what occurred, but while on the ground, Capt. Matzinger arrived and pepper sprayed him. Capt. Matzinger also used an elbow to hit his left arm, held his neck down with his arm, and pressed his fingernails into his neck. § 87(2)(b) denied resisting. § 87(2)(b) had pain to his arm and neck, a mark to his neck from the fingernails and a scratch on his right forearm.

According to the officers, § 87(2)(b) was considered stopped and was going to be issued summonses for littering and an open container when he took flight. As a result, they ran after him. PO Pruitt grabbed § 87(2)(b) by his upper body and § 87(2)(b) fell. PO Pruitt denied tripping or punching § 87(2)(b) and PO McEvoy denied seeing PO Pruitt do this. PO Pruitt and PO McEvoy got on the ground and struggled to place § 87(2)(b)'s hands behind his back because he flailed his arms. PO Pruitt and PO McEvoy gave § 87(2)(b) verbal commands to put his hands behind his back and stop resisting but he did not comply. Capt. Matzinger arrived about a minute later. Capt. Matzinger also told § 87(2)(b) to place his hands behind his back and stop resisting, and tried grabbing § 87(2)(b)'s hands. § 87(2)(b) continued to flail his arms and kick. Then, Capt. Matzinger pepper sprayed § 87(2)(b). According to Capt. Matzinger, he pepper sprayed § 87(2)(b) because he was striking the officers. § 87(2)(b) screamed and stated that his eyes were burning. Then, the

officers were able to handcuff him. PO Pruitt denied using any other force and denied punching, kicking, elbowing, or kneeing § 87(2)(b) holding his head against the ground or pressing fingernails in his neck. PO Pruitt and Capt. Matzinger did not recall using any other force and did not recall punching, kicking, elbowing, or kneeing § 87(2)(b) holding his head against the ground or pressing fingernails in his neck. All of the officers corroborated that they did not know § 87(2)(b) was mentally disabled until after he was handcuffed.

The video footage showed § 87(2)(b) sitting on a bench, removing objects from a garbage can next to him and placing them into small plastic bags over the span of five minutes. Ten seconds before PO Pruitt and PO McEvoy appear in camera view, § 87(2)(b) looked around and placed one of the small plastic bags on the ground, in between the garbage can and almost behind the bench. PO McEvoy stood in front of § 87(2)(b) and engaged him in conversation, while PO Pruitt stood a couple of feet behind. § 87(2)(b) leaned his right arm towards the garbage can, stretched his arms out on his sides, and stood up. About forty seconds after the approach, § 87(2)(b) took a few steps and ran away. PO McEvoy and PO Pruitt ran after him. PO Pruitt caught up to § 87(2)(b) and hit him once in the upper body, causing § 87(2)(b) to fall to the ground on his back. PO McEvoy knelt down and appeared to grab onto one of § 87(2)(b)'s hands, but § 87(2)(b) moved side to side. PO McEvoy lied across § 87(2)(b)'s back while he is face down. § 87(2)(b) raised his legs back and moved them up and down. Capt. Matzinger approached the officers and all three officers appeared to be holding § 87(2)(b) down, who moved continuously. Then, Capt. Matzinger removed the pepper spray can and pointed it towards § 87(2)(b)'s upper body for about six seconds. § 87(2)(b) lifted his body upward, but PO Pruitt and PO McEvoy held onto his body. Then, Capt. Matzinger struck § 87(2)(b) with his knee three times near his upper body. At the same time, PO McEvoy punched § 87(2)(b) twice in the back. § 87(2)(b) continued to lift his lower body. PO McEvoy laid his chest on § 87(2)(b)'s back, while Capt. Matzinger and PO Pruitt appeared to handcuff § 87(2)(b). Then, § 87(2)(b) stopped moving.

According to N.Y.S. Criminal Procedure Law §140.50(1), a police officer may stop a person when he reasonably suspects that such person is committing, has committed, or is about to commit a crime. (encl. A1) Possession of an open container containing an alcoholic beverage by any person in a public place is a violation of the Open Container Law. Possession of an open container by any person shall create a rebuttable presumption that such person did intend to consume the contents thereof in violation of the Open Container Law. NYC Administrative Code 10-125 (b-c) (encl. A2-3) An officer can pursue an individual for violation of the Open Container Law. People v. Neely, 18 A.D.3d 394 (App. Div. 1st Dept., 2005) (encl. A4) Pursuit of an individual by the police requires reasonable suspicion, which exist when there is founded suspicion that criminality is afoot in addition to flight. People v. Riley, 290 A.D.2d 568 (App. Div. 2nd Dept., 2002) (encl. A5-6) According to Patrol Guide Procedure 203-11, only the amount of force necessary to overcome resistance will be used to effect an arrest. (encl. A7-8) According to Patrol Guide Procedure 212-95, the use of pepper spray is proper when used to effect the arrest of a resisting suspect, for self-defense, or establish control of a suspect resisting arrest or attempting to flee from custody. (encl. A9-12)

§ 87(2)(g)

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§ 87(2)(g) [Redacted]
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Team: _____

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date